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Supreme Court, U.S.
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No. A-432

In the Supreme Court of the United States

OCTOBER TERM, 1986

RONALD R. SHAW, PETITIONER

v.

SHERIFF ROBERT WINTER, APPELLEE-RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RONALD R. SHAW
P.O. Box 4887
San Jose, California 95150
Petitioner in Pro-Se

GOPP

ISSUES TO BE SUBMITTED

The issues on appeal among others, will be the following:

1. Whether the Ninth Circuit's decision conflicts with the same court's decision handed down four months previously.

2. Whether that the Summary to the court's opinion released to the public is erroneous and establishes faulty authority.

3. Whether the Ninth Circuit's decision conflicts with the *Twigg* decision handed down by the Third Circuit in regards to fundamental fairness or "outrageous" conduct.

4. Whether the Ninth Circuit's decision sanctions and restricts the District Court from protecting the Constitutional Rights of American citizens.

5. Whether in color of law and in violation of Title 42, 1983, the respondents sold the petitioner non stolen goods for the sole purpose to cause the petitioner to lose his liquor license so that the black customers would leave the downtown redeveloping area.

6. Whether the District Court's fact-finding established the fact that the petitioner had not been involved in stolen property or food stamps before he was approached by the police. There was no legal reason to set up the petitioner.

7. Whether petitioner was arrested and convicted under a case law that is void. The case law attempt to receive stolen goods, when the goods are not stolen, is contrary to California Statutory Law 496 and is in contravention of Article IV, section 9 of the California Constitution so thereby void.

8. Whether the Ninth Circuit Appellate Court has rendered a decision on "outrageous" government

conduct in conflict with the Third Circuit's decision in the *Twigg* case upholding "outrageous" government conduct.

9. Whether the attempt to receive stolen goods, when the goods are not stolen, is an unconstitutional tool designed to target minorities and take away "the gains" that minorities have made as a result of Federal Civil Rights Legislation.

10. Whether the District Court found the petitioner's due process rights violated under color of law.

11. Whether the food stamp scheme violated the petitioner's civil and due process right by being used in a discriminatory manner.

12. Whether the Ninth Circuit's judgment and opinion are wholly inconsistent with the facts which shows an abuse of discretion.

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INTERESTED PARTIES

The interested parties are the following:

1. The United States Court of Appeals for the Ninth Circuit.

2. The District Court for the Northern District of California.

The petitioner knows of no other parties with the exception of the State of California.

In addition, petitioner knows of no other related matters in this Court.

All pertinent official opinions, of the Lower Court, are located in the appendix.

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FOOTNOTE REFERENCES

DC = District Court's Opinion
CR = Court Reporter's Transcript } *used*
RT = Court Reporter's Transcript } *interchangeably*
ER = Excerpt of Record
NC = Ninth Circuit's Opinion

INTRODUCTION

This appeal, for Petition of Certiorari, is dedicated out of respect for the following persons:

1. Betty Dinardi who gave the Petitioner courage to work within the law and to continue this matter into this court.
2. *The San Jose Mercury News* reporter, Glenn Bunting, who had the courage to print the "outrageous" conduct of the San Jose Police.
3. The Santa Clara County Sheriff's Department, that did not violate the petitioner's civil rights while he was unconstitutionally confined.
4. The District Court Judge, the Honorable Robert P. Aguilar, who had the courage to attempt to protect the civil rights of all Americans and put an end to "outrageous" police conduct.
5. The Ninth Circuit judges who had the courage to apply the law holding the City of San Jose responsible for their "outrageous" conduct inflicted on the citizens and employees that stood by the Petitioner even though being constantly harassed and abused by the San Jose Police. (84-1895)
6. Janine Player, barmaid, who has dragged out of petitioner's bar, in handcuffs, for attempting to work for petitioner.
7. Attorney Mark Schroeder who attempted to defend the petitioner and was promptly arrested, losing his license to practice law as a result of attempting to defend the petitioner, and,
8. Reverend Martin Luther King, Jr., President John F. Kennedy, President Lyndon Baines Johnson and all Civil Rights persons who fought and suffered for Civil Rights Legislation and due process of law.

Petitioner's petition to this court, concerning the time, loneliness and efforts to submit this "outrageous" matter to this court, is a small price to pay considering what the above persons had to endure to preserve the right for this petition to be possible.

After the court has reviewed the petitioner's opening brief and exhibits, it is respectfully prayed that those

people who made Civil Rights and due process of law possible did not do so in vain, and please keep in mind all the soldiers who bled and died for due process of law for all Americans.

The petitioner has not ever been in the armed services of this country. But, it appears that the petitioner's purpose in life was not to go to war but to bring to this court's attention as to what the above citizens had to endure to preserve the right to bring this matter to this court.

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PRELIMINARY STATEMENT OF THE CASE

A. Proceedings in the State Court

On July 27, 1981 petitioner, Ronald R. Shaw, was convicted in the Santa Clara County Superior Court of five counts of attempted receiving stolen property (Cal. Pen. Code, section 664/496) and one count of unauthorized possession of food stamps (Cal. Pen. Code section 396) (ER 2, 47-48, 59) He was placed on probation, sent to county jail for 12 months, and fined $2,000. (ER 2, 71, 160-161). The judgment was affirmed in an unpublished opinion filed September 15, 1983 by the California Court of Appeal, First Appellate District, Division Five. (ER 59-64). The California Supreme Court denied hearing. (ER 3, 49). Thereafter petitioner petitioned for a writ of habeas corpus in the California Supreme Court which was denied. (ER 10-14, 49, 157).

B. Proceedings in the District Court

The instant petition was filed August 10, 1984, in the United States District Court, Northern District of California ER 1). The District Court issued an order to show cause on October 3, 1984. The court simultaneously denied bail, with the denial to "remain in effect through the entire dependency of this matter until its disposition." (ER 158-195). An answer was filed on October 31, 1984 (ER 47 et seq.). On April 1, 1985 the District Court dismissed the instant petition as moot because petitioner had been released from custody (CR 18). After a letter from the California Attorney General's Office (CR 19), and a notice of appeal filed by petitioner (CR 21), the court, on April 26, 1985, vacated its order of April 1, 1985 pending further consideration (CR 25).

On June 17, 1985 the court filed an "order granting writ of habeas corpus," ordering petitioner's state conviction "vacated" (ER 160-165). The respondents filed a notice of appeal from the order on July 11, 1985 (ER 166). On July 189, 1985 the court filed a "judgment" pursuant to its earlier order, which was entered in civil docket on July 31, 1985 (ER 168). On August 20, 1985 the

respondent filed an "amended notice of appeal" to make clear the appeal is from the judgment (ER 169).

C. Proceedings in the Appellate Court for the Ninth Circuit

On August 11, 1986 the United States Court of Appeals for the Ninth Circuit reversed the United States District Court's judgment.

On August 20, 1986, petitioner filed a petition for rehearing.

On September 5, 1986, the Appellate Court denied petitioner's petition for rehearing.

On September 22, 1986, petitioner filed a Notice of Appeal.

On September 24, 1986, petitioner mailed an amended Notice of Appeal.

On October 19, 1986, the Supreme Court of the United States Clerk's Office received a petition for extension of time from the petitioner.

Shortly thereafter, the Clerk's Office received forty briefs from the petitioner.

The petition for time and the briefs were returned because they all were done incorrectly.

On December 2, 1986, petitioner used Federal Express and sent to the Clerk's Office a corrected application of extension for time.

On December 9, 1986, petitioner received an order granting petitioner time for filing a petition extended to and including January 3, 1986. Said order had been signed by Honorable Sandra D. O'Conner, Associate Justice.

D. Subject Matter Jurisdiction

The District Court had jurisdiction over this habeas corpus matter. (28 U.S.C. section 2241)

E. Appellate Court's Jurisdiction over the Appeal.

The Ninth Circuit had jurisdiction of this appeal, pursuant to title 28 U.S.C. section 2253.

F. This Court has Jurisdiction of this Appeal Pursuant to Title 28 U.S.C. section 2254.

G. Timeliness of Appeal.

The appeal is timely. The notice of appeal was filed within 30 days of the judgment or order.

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STATEMENT OF CASE AND FACTS

Undercover police officer Emmons gave the petitioner extensive advice as to how to pass the food stamps and reassured petitioner that he would not get into trouble. DC:5 see Exhibit A. Moreover, he suggested to petitioner for petitioner to attempt to obtain cash from a store.

Over the course of months Emmons initiated the sale of food stamps to the petitioner. The police initiated all sales.

All food stamp booklets had the usual warning labels of unauthorized use removed.

There is no evidence that the petitioner had ever been involved in the receipt of stolen property or food stamps.

The District Court stated the sole purpose of these actions was that of leading the petitioner into committing a crime which the police could supervise and for which they could then arrest the petitioner. See Exhibit B (DC 5:21).

The District Court's fact-finding found the facts shocking to the universal fundamental of fairness and issued a writ of habeas corpus on "outrageous" grounds.

The state investigating officer, Emmons, the prime witness, admitted being intoxicated during the investigation. See Exhibit C.

USDA Ann Littleton's testimony implied that San Jose Police committed perjury to obtain the food stamps to sell to the petitioner. See Exhibit B.

The first scheme of the San Jose Police failed, in that, Emmons requested some men's clothes if anyone happened to come into the bar selling clothes. Within 24 hours an unidentified man entered the petitioner's bar and asked the petitioner if he knew of anyone who can fit into size 44 clothes. Petitioner was supposed to buy the clothes cheap and sell the clothes to Emmons. The clothing scheme was done under color of law in violation of Title 42. (RT: 89, 90, 91).

The food stamp scheme was done under color of law and in a discriminatory fashion in that:

a) acting under color of law and deceitfully removing the warning labels from the food stamp

booklets for the sole purpose to cause the petitioner to commit a crime and lose his liquor license;

b) acting in a discriminatory fashion, the San Jose Police refused to sell the stamps to non-blacks even though the non-blacks requested some of the stamps;

c) the San Jose Police did not attempt to try to sell any white bar owner food stamps.

The above unconstitutional conduct of the respondents shows that the treatment of petitioner was arbitrary; unreasonable; and was intentional and deliberate discrimination against petitioner on account of racial reasons.

The San Jose Police violated the petitioner's civil and due process rights under the 14th Amendment of the United States Constitution in that the San Jose Police are enforcing a case law, attempt to receive stolen goods, when the goods are non-stolen, which said law is designed and is only enforced against non-whites, in a fashion that abridges the privileges of black citizens and other minorities and violates the Equal Protection and due process clauses.

The facts clearly show that there was no reason for the San Jose Police to target the petitioner except to cause his bar to close.

The petitioner has maintained throughout this matter that his constitutional rights have been violated by the unconstitutional conduct of the San Jose Police.

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SUMMATION OF THE FACTS

The Appellate Court's opinion states that Emmons was part of an undercover operation that was aimed at dealers in stolen property, and Emmons became a regular customer (NC 1:18).

Spending 11 months in petitioner's bar and only arresting the petitioner and the only way to be able to arrest the petitioner was for Emmons to sell his own property shows a poor showing for the taxpayers' money. The petitioner was not a dealer in any illegal operation.

The facts show that there is no evidence that petitioner has ever been involved in stolen property. The San Jose Police had no legal reason to set up the petitioner.

Furthermore, the facts show that petitioner has been denied due process of law and his civil rights have been violated.

The only reason that petitioner was sold the food stamps was to cause the bar to lose its license and cause the black citizens to leave the area. The results speak for themselves. The white bar is still open and the area has no black citizens in site. Petitioner had to pay eight months of freedom and lost his business just so the City of San Jose could get rid of black American citizens.

The Ninth Circuit determination condones the racial policies of the City of San Jose and gives the go-ahead to continue with that policy.

The petitioner's brief in the Ninth Circuit proved the respondents were wrong; so wrong that the respondents refused to answer the facts that were called to their attention. But instead replied with a three-page brief that evaded the facts.

The Appellate Court handed down a decision and opinion on April 28, 1986, finding the San Jose Police violated the constitutional rights of the petitioner. (No. 84-1895)

The Court stated:

> "We hold that there were sufficient allegations in the complaint that there was a City policy of discriminatory law enforcement and that the municipal

defendants caused the Shaws to be deprived of their constitutional rights"

On August 11, 1986, the same Appellate Court, Ninth Circuit, 4 months later, found the respondents acted properly in setting up petitioner. There is a conflict present with the two opinions.

The City of San Jose and the San Jose Police acting in bad faith and in conspiracy with the California Alcoholic Beverage Control caused the petitioner to be denied equal protection and equal treatment under the law causing the State of California to deprive the petitioner of valuable property, his bar license and income from a lawful bar business in contravention of the State and Federal Constitutions.

The Court overlooked the fact that the respondent's intentional conspiratorial conduct under the color of law and authority of the State of California was without due process of law; in that, the respondents intimidated all attorneys and caused the attorneys to refuse to defend the petitioner because he is black and owned a black bar in downtown San Jose. The petitioner was forced to defend himself. On pages 1 and 2, respectively, of the petitioner's brief in the Appellate Court, informs the court that he was denied counsel as a result of the unconstitutional conduct of the respondents.

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"OUTRAGEOUS" POLICE CONDUCT

A. U.S. Supreme Court Ruling *United States v. Russell* Condemns "Outrageous" Police Conduct

Following the guidelines in the *United States v. Russell*, handed down by this Court, petitioner believes that this matter at bar is a perfect example of "outrageous" police conduct.

This Court reversed the matter in United States v. Russell [*U.S. v. Russell* 411 U.S. 423, 93, SCT 1637 36 Licd, 2d 366 (1973)].

In the *Russell* matter, the defendants presented this Court with two theories.

First, the government supply of P-2-P constituted entrapment as a matter of law regardless of predisposition.

Second, the police conduct was so repugnant that due process principles barred prosecution.

This court reversed as to both theories. The court held that the absence of predisposition is the focal point of the entrapment defense. Since the defendant conceded predisposition, that defense could not be raised.

On the second theory this court explicitly left the defense available but decided that it was not applicable on the facts of the case. The court stated:

> "We may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction."

Petitioner believes that this instant matter is distinctly of that breed and the day has surely come. This Court also stated that:

> "in the *Russell* matter the agents' contribution of propanone to the criminal enterprise already in process was scarcely objectionable."

The court added:

> "the law enforcement conduct here stops far short of violating that 'fundamental fairness,' shocking to the universal sense of justice mandated by the due process clause of the Fifth Amendment." (411 U.S. AT 431-32, 935CT)

This Court went on to make an important point in the *Russell* matter:

> "The defendant was an active participant in an illegal drug manufacturing enterprise which began before the government agent happened on the scene." (*Id* at 436, 93 S.Ct. at 1645)

In this matter, the petitioner was not an active participant in any illegal activity. Petitioner was minding his own legal business.

The food stamps scheme was initiated and completed by the San Jose Police in order to close the bar and cause black citizens to leave the area.

The San Jose Police were involved in this matter from the start to finish. No crime would have been committed if the police had not created the unconstitutional food stamp scheme.

Furthermore, no crime was committed because the food stamps were non-stolen.

The Appellate Court ignored the facts in this matter. The defense has been adopted by the Ninth Circuit. *Greene v. United States,* 454 F.2d 785 (9th Cir. 1971); *United States v. Batres-Santolino, 521 F.Supp 744 (N.D. Cal. 1981).* In the federal courts, the matter is a question of law for the court to decide, *United States v. McQuin,* 612 F.2d 1193, 1196 (9th Cir. 1980), and is accordingly available to a defendant who is "predisposed" to commit the crime.

B. Other Decisions Condemning "Outrageous" Police Conduct

The precise bounds of the defense are only generally defined by the available case law, but it is clear that the due process defense is available when the extent of government involvement in the criminal enterprise assumes objectionable proportions. The defense is designed to preclude prosecution in circumstances where police over-involvement in the fabrication and commission of the crime is "outrageous" as it was here. See *United States v. Twigg,* 588 F.2d 373, 379 (3rd Cir. 1978); *United States v. Johnson,* 565 F.2d 179, 181 (1st Cir. 1977); *United States v. Hammond,* 598 F.2d 1015 (5th Cir. 1979).

An example of police-created crime which raises due process implications is another Abscam-like decision, *United States v. Jannotti,* 501 F. Supp. 1182, 1189 (E.D.Pa, 1980), where the district court set aside a jury verdict and entered judgment of acquittal on grounds of due process governmental overreaching. *Id.* at 1205.

The defendants there had been convicted of various crimes, including bribery and conspiracy, in an Abscam-type operation. The court concluded in dismissing the charges:

> "In the long run, the rights of all citizens not to be led into criminal activity by governmental overreaching will remain secure only so long as the courts stand ready to vindicate those rights in every case." *Id* (Emphasis added).

In *United States v. Batres-Santolino, supra,* the defendants were indicted for conspiracy to import cocaine and conspiracy to possess cocaine with an intent to distribute it. A government agent met the defendants at the home of a friend and they discussed cocaine. The agent suggested he had a source and offered to supply substantial quantities to defendants. The transaction took several months to consummate, the agent

promising a lucrative source of supply if defendants signed on. An agreement was finally reached and defendants were arrested shortly thereafter while making preparations to pick up the cocaine.

The district court, Patel, J., dismissed the action on due process grounds despite the fact that the defendants were not entirely free from culpability on account of the overreaching governmental activity:

> "This is a case of that distinguishable variety posed in *Sherman* and *Russell* where the 'criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute. *Sherman v. United States,* 356 U.S. at 372, 78 S.Ct. at 820, 2 L.Ed.2d 848), quoting *Sorrells v. United States,* 287 U.S. at 442, 53 S.Ct. at 212, 77 L.Ed. 413.
>
> "Although the defendants in this case are not without some culpability, they were not embarked or about to embark on any criminal activity until the government's agents set in motion the operation." *Id.* at p. 752. (Emphasis added)

Whether the conduct is outrageous is a matter of degree and relativity. The more serious the crime, the greater the justification, naturally, for invasive police techniques designed to ferret out such activities. Thus, the cases have discussed the severity of the criminal activity in comparison to the extent of police involvement. The *Twigg* court noted:

> "We are adhering to Justice Powell's reasoning in *Hampton v. United States,* 425 U.S. 484, 495-496 that in evaluating whether government conduct is outrageous, the court must consider the nature of the crime and the tools available to law enforcement agencies to combat it."

The discussion of the facts of this case as applied to entrapment analysis is applicable to this parallel constitutional defense of outrageous police over-involvement in the creation of crime as well. The police investigation of petitioner was irresponsible and negligent along entrapment grounds, and it was "outrageous " on due process grounds. Particularly opposite here, however, is the test proposed by Justice Powell in *Hampton v. United States*. Here, the crime with which petitioner is charged is a minor one -- not involving violence or posing a substantial threat to society -- and there exists a variety of other means available to the police to combat it other than selective programs designed to test the virtue of San Jose residents..

Accordingly, petitioner submits that even if entrapment did not preclude his prosecution, his constitutional right of due process would do so under the *Russell* and *McIntire* principles of "outrageous government conduct."

A government acts outrageously when it acts irresponsibly and negligently with little regard for little apparent social utility and unmindful of the human costs it wrecks by virtue of its activities.

The court also stated that Emmons gave the petitioner some hints no how to pass the stamps. (NC 2:2)

The facts show that Emmons did more than hinted. The facts show:

1. That Emmons assured the petitioner that he could not get in trouble for what he was doing with those food stamps (RT: 177).

2. That Emmons told petitioner on several occasions that the petitioner could not get in trouble (RT: 168).

3. That Emmons deliberately lied to petitioner in several different ways (See Exhibit C).

The facts show that Emmons approached the petitioner and told the petitioner that he dealt in discontinued merchandise and bought and sold items.

The Ninth Circuit's decision and opinion condones the outrageous and deceitful conduct that was inflicted on the unsuspecting and friendly petitioner.

The District Court was correct in attempting to protect all Americans from the above outrageous

conduct. By deeming the police conduct as unconstitutional and "outrageous."

Following the guidelines handed down by this Court in the *Russell* matter, petitioner believes this matter at bar establishes what is meant by fundamental fairness or "outrageous " police conduct shocking to the universal sense of justice mandated by the due process clause.

The case law attempt to receive stolen goods when the goods are not stolen was designed and is used against minorities to take away civil rights that were gained under Civil Rights Legislation.

The attempt to receive in this matter was used in a discriminatory fashion. In that, the petitioner was the only person sold the non-stolen goods, even though others attempted to purchase the stamps from Emmons. (See Exhibit C.)

The Ninth Circuit's decision condones the racial policy of the City of San Jose and the conduct of its police department giving the go-ahead to continue to sell non-stolen goods to American citizens in order to destroy citizens that San Jose disfavors.

American Sense of Justice was founded on the following Sense of Justice:

"It is better to allow ten guilty men to go free, then to convict one innocent man."

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SHORTCOMINGS OF THE NINTH CIRCUIT'S RULING

A. The Ninth Circuit Overlooked the Following Facts that Violated the Due Process Rights of the Petitioner:

1. The court overlooked the laws that protect black citizens from the deceitful and unconstitutional conduct of the police.

2. The petitioner called the Court's attention to Title 18, Section 242 which makes it criminal for the state to unlawfully act under color of law and violate the constitutional rights of the petitioner.

3. The facts show that petitioner was targeted for the sole purpose to cause his bar to close so that black citizens would leave the area. The San Jose Police engaged in deliberate, vexatious conspiratorial conduct, under color of law, with the intended purpose to violate the civil rights of the petitioner because he is black and his customers were sixty-percent black. The food stamp scheme was not attempted on the white bar and owner located 80 feet from the petitioner's bar.

4. The sole purpose of targeting the petitioner was to close his bar and drive the black citizens out of the San Jose downtown area.

5. The petitioner called to the Court's attention that the San Jose Police acted in bad faith and violated petitioner's civil rights and a large number of black citizens that patronized petitioner's bar. The conduct of the San Jose Police was done under color of law in violation of Title 42, Section 1983, Title 18, Section 242, and the 14th Amendment Equal Protection and due process clauses of the United States Constitution.

6. The San Jose Police committed perjury to obtain the food stamps by falsely stating to the USDA special agent that the petitioner was a fence.

B. The Ninth Circuit's Decision is Contrary to the Facts in this Matter

The Court's opinion states: "That the police officer Emmons was part of an undercover operation that was aimed at dealers in stolen property and Emmons became a regular customer." (CA: 1).

The facts show that Emmons spent one year in petitioner's bar and was constantly under the influence of alcohol and by reference of the California driving charts, Emmons was legally drunk. The Court should have taken a dim view of Emmons' statements. (Exhibit A.)

In addition, the facts show that petitioner was the only citizen out of eighty cases of the undercover operation that was sold non-stolen goods and subsequently arrested for buying the goods. All others sold stolen goods to the undercover operation.

Furthermore, the operation was set up to buy stolen goods, not to sell non-stolen goods to a citizen.

The facts clearly show that there is no evidence that the petitioner had ever been involved in stolen property. The San Jose Police had no legal reason to set up the petitioner.

The police conduct was "outrageous" and violated the due process rights of the petitioner. In addition, the police committed perjury to obtain the food stamps from the USDA. (Exhibit B)

The facts show that petitioner has been denied due process of law and his civil rights have been violated.

The sole purpose that the San Jose Police sold petitioner non-stolen goods was to cause petitioner's bar to close and cause black American citizens to leave the downtown redeveloping area. The results speak for themselves. The white bar is still open for business and the area has no black citizens in sight.

Finally, the evidence clearly shows that the warning labels were removed from all food stamp booklets, so that the petitioner would be deceived.

C. Petitioner 's Arrest was in Contravention of the California Constitution

Petitioner was arrested and convicted under California case law, Attempt to Receive Stolen Property, and is in Contravention of the California Constitution, and is thereby void

California case law, attempting to receive stolen goods, when the goods are not stolen, is in direct contravention of the California Constitution and California statutory law Penal Code 496. Thereby, it is unconstitutional and in violation of the 14th Amendment due process clause of the United States Constitution.

Article IV, section 9, of the California Constitution states:

> "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A section of a statute may not be amended by reference to its title."

California statutory law Penal Code 496 states:

> "Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds or aids in concealing, selling or withholding any such property from the owner, knowing their property to be so stolen or obtained."

Nowhere does California statutory Penal Code 496 express non-stolen goods.

The state authorities are enforcing a case law which is in contravention of the California Constitution and contrary to California statutory law, to embrace a subject not expressed in its title, and is thereby void and unconstitutional.

This Court has stated:

> "That the Fourteenth Amendment under the Enabling Clause in section 5: Congress has the power to remedy state discrimination that it finds denies someone equal protection and state action that it finds violates due process; and the Court will uphold such federal legislation as long as it can perceive a basis for the congressinal determination." [*Katzenbach v. Morgan,* 384 U.S. 641 (1966)]

Congress has passed numerous federal laws to conbat State discrimination under color of law. Sections 1343, 242, 1983 and a host of others to ensure that the due process rights of American citizens are not violated by the awesome power of the state.

The District Court investigated this matter and found "outrageous" police conduct. The District Court was attempting to adhere to guidelines of the United States Supreme Court and Ninth Circuit in finding that the due process rights of the petitioner were violated by the San Jose Police.

D. The Ninth Circuit's Decision In This Matter Causes a Conflict to be Present with the Third Circuit's Decision on the *Twigg* Case.

[*U.S. v. Twigg* 588 F.2d 373 (1978)]

The Ninth Circuit's reversal of the District Court's judgment causes district courts to be confused as to what is meant by "outrageous" government conduct.

Moreover, the opinion is contrary to the facts and to this Court's intentions to protect black citizens from "outrageous" discrimination and colorable unconstitutional conduct by the states.

The Ninth Circuit Court's opinion condones the unconstitutional conduct of the San Jose Police and restricts the power of the district courts to combat police

conduct that violates the universal fundamental fairness doctrine.

The District Court attempted to follow this Court's efforts to stop the discriminatory conduct of the police when the facts showed a basis for the District Court's intervention.

The Appellate Court's reversal takes away the power of the District Court to carry out the efforts of this Court and Congress.

The District Court found no constitutional reason for the San Jose Police to spend a year in petitioner's bar to sell him some non-stolen goods and subsequently arrest him (DC 5:21).

The facts show that petitioner had not ever been involved in stolen property or food stamps.

It was obvious to the District Court that the sole purpose that petitioner was sold non-stolen food stamps was to cause petitioner to commit a crime so that the police could arrest him.

Petitioner prays that the United States Supreme Court will resolve this long-standing conflict as to what this Court deems "outrageous government conduct."

The District Court's fact-finding found that the San Jose Police caused and induced petitioner to violate California case law that petitioner was not predisposed to commit.

Further fact-finding convinced the District Court that the San Jose Police falsely claimed that its goal was to ferret out the distribution of stolen food stamps, but police activities did not reflect that alleged goal (DC 5:25).

The District Court emphatically and correctly stated:

> "That there was no evidence that petitioner was involved in stolen property before approached by the San Jose Police." (DC 5:17)

Petitioner had to pay the loss of his business and eight months of freedom so that the City of San Jose could get rid of black American citizens.

REQUIREMENT OF CERTAINTY

Federal Case Law *Grayned v. City of Rockford* Requires a Requirement of Certainty in Criminal Statutes

> "A statute must give fair warning of the conduct that it makes a crime. It must be sufficiently explicit to inform those who are subject to it exactly what conduct on their part will render them liable to its penalties. Moreover, the requirement of certainty prevents arbitrary and discriminatory enforcement of criminal statutes. It assures explicit standardes to guide the police as well as the public." *Grayned v. City of Rockford* (408 U.S. 104 1972)

The authorities are covertly enforcing the non-stolen case law of attempting to receive stolen property, when the property is non-stolen, in an arbitrary and discriminatory manner in contravention of the guidelines handed down by this Honorable Court.

The non-stolen case law is being deceitfully and covertly used against unsuspecting citizens that are in a disfavored position with government authorities.

The checks and balances built in the United States Constitution, to ensure due process, have been circumvented by the government authorities. The non-stolen case law does not give fair warning of the conduct that it makes a crime and does not describe the conduct required. Moreover, it is void and therefore illegal.

Petitioner believes that the non-stolen case law does not follow the guidelines of this Court because it is not designed to follow the due process guidelines but was covertly designed to be used as a "trick of the trade"; in that, if the disfavored citizen cannot be found to have dirty hands then as a last resort the unconstitutional, illegal and voided non-stolen case law is to be deceitfully used. The petitioner was offered a deal to plead guilty to

one charge and all others would be dropped, which petitioner refused.

The Santa Clara County District Attorney's office and all parties knew that the petitioner was not guilty of the non-stolen case law because of being voided by Article IV, section 9 of the California Constitution and the guidelines handed down by this Honorable Court.

Employees of the District Attorney's office attempted to covertly correct the outrageous charges by deceitfully adding an equal number of possession of food stamps charges praying that the jury would correct their unconstitutional and deceptive scheme finding the petitioner guilty of possession of food stamps.

When that scheme failed, the District Attorney's office intimidated all attorneys from defending the petitioner after this matter had reached federal courts.

In an attempt to deter petitioner and to aid the state authorities, one attorney advised the petitioner that he had no basis for a writ of habeas corpus or an appeal for civil suit.

The attorney refused to return any portion of the $2,890.00 that was paid to him even though the Santa Clara Bar Association had awarded $2,550.00 to be returned to the petitioner. The attorney refused to return the money for the sole purpose to deter the petitioner from hiring another attorney. Details are in petitioner's brief submitted to the appellate court.

Surely, this Court can see, from the facts presented, that this matter is no longer a matter concerning the petitioner but is a threat to a large segment of the public that are disfavored by the state authorities.

The district court was correct in attempting to protect all American citizens from "outrageous" government conduct.

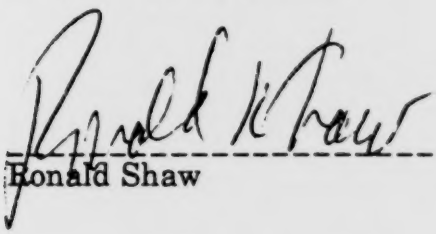
The district court did not gain any state government friends by correctly deeming this matter as "outrageous"; but, on the other hand, the district court can have a clear conscious knowing that the court upheld its sworn duty to uphold the United States Constitution and protection of all American citizens from "outrageous" government conduct.

CONCLUSION

It is respectfully prayed that the judgment of the United States Court of Appeals for the Ninth Circuit be reversed and the District Court's judgment be held to be valid on the fundamental fairness doctrine, or alternately, the respondents be held responsible for violating the petitioner's civil rights under Title 18, section 242, Title 42, section 1983, and for acting under color of law.

Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,



Ronald Shaw

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Ronald R. Shaw,	)	
Petitioner-Appellee,	)	**No. 85-2285**
	)	
v.	)	**D.C. No.**
	)	**C-84-20530-RPA**
Sheriff Winter,	)	
Respondent-Appellant	)	**ORDER**

Filed September 5, 1986

Before: Charles M. Merrill, Herbert Y.C. Choy, and Anthony M. Kennedy, Circuit Judges.

COUNSEL

Blair W. Hoffman, San Francisco, California, for the respondent appellant.

Ronald R. Shaw, Pro Per, San Jose, California, for the petitioner-appellee.

ORDER

The petition for rehearing of *Shaw v. Winter* . . . F.2d . . . (9th Cir. 1986) is denied.

The earlier case, *Shaw v. California Department of Alcoholic Beverage Control,* 788 F.2d 600 (9th Cir. 1986), does not involve the food stamp sales at issue in the present habeas corpus case. See id at 610. That case involved charges of racially motivated harrassment that are not at issue in the present case. The record in the present case, including the transcript of Ronald Shaw's trial for attempted receipt of stolen property and

unauthorized possession of food stamps, contains no evidence of racial discrimination. The result in the present case has no bearing on the merits of the Shaws' lawsuit under 42 U.S.C. § 1983 (1982), in which they are free to proceed in accordance with this court's opinion published at 738 F.2d 600.

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FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Ronald R. Shaw,	)	
Petitioner-Appellee,	)	**No. 85-2285**
	)	
v.	)	**D.C. No.**
	)	**C-84-20530-RPA**
Sheriff Winter,	)	
Respondent-Appellant	)	**OPINION**

Appeal from the United States District Court
for the Northern District of California
Honorable Robert P. Aguilar, District Judge, Presiding
Argued and Submitted June 10, 1986
San Francisco, California

Before: MERRILL, CHOY, and KENNEDY, Circuit Judges

MERRILL, Circuit Judge:

The State of California appeals from the grant of Ronald R. Shaw's petition for habeas corpus.

As part of an undercover operation aimed at dealers in stolen property, San Jose Police Officer James L. Emmons became a regular customer at the bar that Shaw operated. Shaw introduced Emmons to someone who sold Emmons some steeply discounted suits of clothing. Emmons in turn sold Shaw a microwave oven for a fraction of its value.

Over a period of several months, Emmons sold Shaw food stamps at forty per cent of their face value. Emmons took the lead in offering the stamps in arranging the sales. He told Shaw that the stamps were stolen but that Shaw would have "no problem" with them. Emmons also gave Shaw some hints on how to pass the stamps. While there is no evidence that Shaw had dealt in food stamps before, once they were

available he purchased them willingly and without pressure.

On the food stamp purchases, a California jury found Shaw guilty of attempting to receive stolen property. Cal. Penal Code §§ 664, 496. (West 1986). The jury also convicted him of unauthorized possession of food stamps. Cal. Welf. & Inst. Code § 10980 (formerly Cal. Penal Code § 396). It rejected his state law entrapment defense. These convictions were affirmed in the state courts. The district court, relying on the state court trial record, granted Shaw's federal habeas corpus petition. It ruled that Emmons' tactics constituted "outrageous government conduct," barring prosecution under the due process clause.

We reverse. Government conduct is "outrageous" so as to preclude prosecution only when it is a violation of "fundamental fairness, shocking to the universal sense of justice." *United States v. Russell,* 411 U.S. 423, 432 (1973), quoting *Kinsella v. United States,* 361 U.S. 234, 246 (1960). See *United States v. Bogart,* 783 F.2d 1428, 1432 (9th Cir. 1986); *United States v. Bagnariol,* 665 F.2d 877, 881-83 (9th Cir. 1981) (per curiam), *cert. denied,* 456 U.S. 962 (1982). A defendant who fails to show entrapment can still claim "outrageous conduct," but only "if he was subjected to police conduct repugnant to the American system of justice." *United States v. Lomas,* 706 F.2d 886, 891 (9th Cir. 1983), *cert. denied,* 464 U.S. 1047 (1984).

The police conduct here was not so shocking as to violate this standard. Government agents are permitted to assume false identities in order to gain the confidence of their targets. *United States v. Marcello,* 731 F.2d 1354, 1357 (9th Cir. 1984). They may supply the contraband which is at the heart of the offense. *Hampton v. United States,* 425 U.S. 484 (1976) (government may supply the illegal drug which the defendants are convicted of selling). In playing out their undercover roles, such agents may "coach" their willing suspects. *United States v. Williams,* 705 F.2d 603, 620 (2nd Cir.), *cert. denied,* 464 U.S. 1007 (1953). Emmons did not transgress permissible bounds.

Other courts have rejected the "outrageous conduct" defense in food stamp "sting" cases. *United*

States v. Lambinus, 747 F.2d. 592, 595-96 (10th Cir. 1984), *cert. denied,* 105 S.Ct. 2143 (1985), *United States v. Salazar,* 720 F.2d 1482, 1488 (10th Cir. 1983), *cert. denied,* 105 S.Ct. 789 (1985); *United States v. Parisi,* 674 F.2d 126 (1st Cir. 1982). The "most effective way to catch and deter retailers or others who would deal in bulk in stolen food stamps may be for the government itself to provide the stamps to the willing buyers." *Parisi, supra,* 674 F.2d at 127. We agree with and apply that reasoning here. See also *United States v. Abushi,* 682 F.2d 1289, 1297 n. 4 (9th Cir. 1982).

Shaw relies on the only two cases where federal appellate courts have upheld the "outrageous government conduct" defense. *United States v. Twigg,* 588 F.2d 373 (3rd Cir. 1978); *Greene v. United States,* 454 F.2d 783 (9th Cir. 1971). The police involvement in the illegal activity here was not as long or deep as it was in those cases.

REVERSED.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Ronald R. Shaw, *Petitioner*	)	**NO. C-84-20530 RPA**
v.	)	
Sheriff Winter, *Respondent*	)	**ORDER GRANTING WRIT OF HABEAS CORPUS**

The Court has received and considered the documents submitted by counsel, and, good cause appearing therefor, enters the following order.

On July 27, 1981, petitioner Shaw was convicted of five counts of attempted receipt of stolen property arising out of Shaw's purchase of food stamps from an undercover police officer on several occasions in 1980. Shaw was also convicted of one count of unauthorized possession of food stamps stemming from the discovery of food stamps in Shaw's possession at the time of his arrest. The convictions were part of a "sting" operation by the San Jose Police Department. Shaw was placed on probation and given a sentence of twelve months in the county jail and a fine of $2000. Shaw brought this petition for a writ of habeas corpus while still incarcerated in Santa Clara County Jail.

Although Shaw has since been released, his petition is not moot. Because of the "collateral consequences" which having a felony conviction entails, including many disabilities and limitations in employment and public sevice, a petitioner's stake in this petition for a writ of habeas corpus remains substantial even after the sentence imposed has been served. *Carafas v. LaVallee,* 391 U.S. 234, 237 (1968).

Shaw has challenged his conviction on several grounds. The evidentiary challenge to the admission of audio and video tapes is not within the scope of federal habeas review because the objections raised were not raised at trial. Shaw must show cause for this failure to

object, and he has not done so. Thus *Garrison v. McCarthy,* 653 F.2d 374 (9th Cir. 1981).

Shaw raises the defense of police entrapment. Because the jury determined petitioner's state law entrapment claim, he is not entitled to federal habeas review of it. Since he was not charged under federal law, he cannot raise the defense under federal law.

However, Shaw is entitled to raise another type of entrapment defense, often referred to as the "outrageous government conduct" defense, and in fact his claim under this defense is meritorious.

This defense poses the question of whether the government's conduct was so outrageous that it violated Shaw's due process rights. *U.S. v. Russell,* 411 U.S. 423 (1973). The Ninth Circuit has continued to recognize this defense even after *Hampton v. U.S.,* 425 U.S. 484 (1976), because in that case only three Justices expressed disapproval of it. *U.S. v. Prairie,* 572 F.2d 1316, 1319 n. 3 (9th Cir. 1978); *U.S. v. Marcello,* 731 F.2d 1354 (9th Cir. 1984). Whether or not there was a due process violation is a question of law. *U.S. v. McQuin,* 612 F.2d 1193 (9th Cir. 1980), *cert. den.* 445 U.S. 954 (1980). Unlike the statutory entrapment defense, the outrageous government conduct defense is available even to a defendant who is "predisposed" to commit the crime. *U.S. v. Wylie,* 625 F.2d 1371, 1377 (9th Cir. 1980), *cert. den.* 449 U.S. 1080 (1981).

In the reported cases involving this defense, its success has turned on the degree of the government's involvement in and instigation of the criminal activity. Where defendants were already engaged in that particular activity, or were actively seeking to become involved in it, and government agents simply joined in an ongoing venture or responded to defendant's overtures, the government's conduct was not considered outrageous. *See e.g. U.S. v. Russell, supra; U.S. v. Lomas,* 706 F.2d 886, 891 (9th Cir. 1983).

Federal courts have upheld this defense where the defendants would not have been able to commit the crimes without the government's assistance and instigation. *U.S. v. Twigg,* 588 F.2d 373 (3rd Cir. 1978) (drug manufacturing); *U.S. v. Batres-Santolino,* 521

F.2d 744 (N.D. Cal. 1981) (drug smuggling); *Greene v. U.S.*, 454 F.2d 783 (9th Cir. 1971) (bootlegging).

In *Greene*, a government agent contacted the defendants some time after they had been arrested on bootlegging charges, and suggested that they start their bootlegging operation again. He provided supplies and equipment, and used veiled threats to urge them to continue the operation. He was the only purchaser of the contraband. The court held that the government was so enmeshed in the criminal activity that the defendants' due process rights would be violated by permitting the convictions to stand.

In *Twigg*, an agent proposed the establishment of a speed laboratory, and supplied the equipment and the essential ingredient. The agent was in charge of production of the drug and taught the defendants how to manufacture it. The court held that this constituted a "demonstrable level of outrageousness" and reversed the convictions.

In this case, Shaw was approached in the bar he owned by an undercover officer. The officer, Emmons, was part of a "sting" operation designed to uncover distribution networks for stolen property. Emmons initiated several transactions with Shaw over the course of several months in early 1980, in which goods from unidentified sources exchanged hands. In April, 1980, an officer from the vice unit contacted Emmons and informed him that the Department of Agriculture was attempting to determine where and how stolen food stamps were distributed. It was agreed that Emmons would offer the stamps for sale to various people, including Shaw. Through conversations in person and on the phone, only some of which were recorded, Emmons suggested to Shaw that he buy the stamps, and the sale took place. When Shaw expressed doubt about the dangers involved in using the stamps, Emmons gave him extensive advice as to how to pass them undetected, and assured him that he would not get into trouble. Over the course of the next four months, Emmons initiated a number of additional sales of food stamps to Shaw. Emmons eventually told Shaw that the stamps were stolen, but Shaw apprently did not know this at the time of the first sale. In

addition, none of the stamps sold to Shaw had the usual warning about unauthorized use printed on them. In any case, Shaw's predisposition to commit the crime after it had been proposed and set up by the government is irrelevant to this defense. There is no evidence that Shaw had ever been involved in the receipt of stolen food stamps before. It appears from the record that he would not have had the contacts or ability to procure food stamps without the active help and prompting of the government. The scheme was devised by Emmons and the vice unit for the sole purpose of leading Shaw into committing a crime which the police could supervise and for which they could then arrest Shaw.

The government claims that its goal was to ferret out the distribution of stolen food stamps. But its activities in this case do not reflect that alleged goal. There was no evidence that Shaw was involved in the receipt of stolen food stamps before he was approached by Emmons. No efforts were made to trace the disbursement of the stamps after they were sold to Shaw. The police activity here does not appear designed to "ferret out ongoing criminal activity," but rather to put Shaw in the business of disbursing stolen food stamps for the first time. *See, U.S. v. Batres-Santolino, supra,* at 752. As such, the government's extensive role in instigating and sustaining this criminal activity brings it within the standards set out in *Greene* and *Twigg,* and this court deems it "outrageous."

Accordingly, Shaw's petition for a writ of habeas corpus is granted, and his conviction is ordered vacated.

IT IS SO ORDERED.
Dated: June 17, 1985.

(Signed)

_____
ROBERT P. AGUILAR
United States District Judge

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/ / /

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

December 8, 1986

Mr. Ronald R. Shaw
P.O. Box 4887
San Jose, CA 95150

Re: Ronald R. Shaw v. Robert Winter, Sheriff
A-432

Dear Mr. Shaw:

Your application for an extension of time in which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who on December 8, 1986, signed an order extending your time to and including January 3, 1987.

A copy of the Justice's order is enclosed.

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk

By

Edward L. Turner, Jr.
Assistant Clerk

vjr
Enc.

cc (letter only): Blair Hoffman, Esq.
Deputy Attorney General
6000 State Building
San Francisco, CA 94102

Clerk, U.S. Court of Appeals for
the Ninth Circuit
(Your No. 85-2285)

APPENDIX 12

SUPREME COURT OF THE UNITED STATES

No.

A-432

RONALD R. SHAW,
Applicant,

v.

ROBERT WINTER, SHERIFF

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including January 3, 1987.

/s/ Sandra D. O'Connor

Associate Justice of the Supreme
Court of the United States

Dated this 8th
day of December, 1986.

ARTICLE IV, SECTION 9
CONSTITUTION OF CALIFORNIA
"STATUTE TITLES"
(p. 100)

SEC. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless section is re-enacted as amended. *[New section adopted November 8, 1966.]*

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SECTION 496
CRIMES AGAINST PROPERTY
CALIFORNIA PENAL CODE

§ 496 Receiving Stolen Property

1. Receiving; knowledge; concealment; punishment. Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be so stolen ...

SECTION 664
CRIMES AND PUNISHMENT
CALIFORNIA PENAL CODE

§ 664. Attempts; punishment

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, ...

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EXHIBIT A
EMMONS TESTIMONY
AT ABC HEARING
Re: Drinking, Non-Stolen Nature of Goods

PLEASE NOTE: Emmons statement at the ABC hearing and the amount of drinks that Emmons said he had in a 3 to 4 hours period.

[EXCERPTS OF TESTIMONY
FROM REPORTER'S TRANSCRIPT FOLLOW]

[RT p. 516:]

PROCEEDINGS

THE COURT: We'll go back on the record for the fourth day of hearing in the matter on the accusation against Ronald and Geraldine Shaw doing business as The Cozy Bourbon Club. This is file number 47778, Registration 16982. The record will reflect that Mr. Shaw is present and represented by Mr. Tenenbaum, his counsel, and Mr. Tipton is representing the Department. Mr. Tipton?

MR. TIPTON: Yes. Officer, would you stand and be sworn, please.

JAMES L. EMMONS,
being first duly sworn by the Hearing Officer to tell the truth the whole truth, and nothing but the truth, was examined and testified as follows:

THE COURT: Would you state and spell your name for the record, please.

THE WITNESS: James L. Emmons, E-m-m-o-n-s.

DIRECT EXAMINATION

BY MR. TIPTON:

Q. Mr. Emmons, what's your business or occupation?

A. I'm a police sergeant with the city of San Jose.

Q: And how long have you been employed by the city of San Jose as a police officer?

A: Eighteen years.

. . .

[RT p. 549-554:]

. . .

Q: On any one of those stretches of time what is the maximum amount of time that you spent in The Cozy Bourbon Club during this one-year period and these 50 to 75 occasions?

A: I would estimate three to four hours.

Q: What did you usually drink when you were in there?

A: Usually bourbon and water.

Q: What is the maximum number of drinks that you would usually have on these three-to-four-hour stays?

A: I would estimate six to eight.

Q: When you left the club on those occasions, did you ever feel that you were under the influence for purposes of driving a motor vehicle?

A: I remember on one occasion I did.

Q: On any occasion when you left the club were you ever under the influence of alcohol for purposes of section 647(f) of the Penal Code?

A: Well, one time I thought at first that I was intoxicated, but when I woke up the next morning I felt that I had been given something other than alcohol. That's the one occasion I remember.

Q: On how many of these occasions were you with another officer?

A: 80 percent.

Q: When you left the club, did you usually meet with other officers before you drove the car away?

A: No, not usually. As I recall, most of the time we were in separate vehicles.

Q: Was any of the property that you sold to Mr. Shaw stolen?

A: No.

Q: Where did you get the microwave oven?

A: We purchased it.

Q: Where?

A: At Best Products in Mountain View.

Q: And the food stamps you got from the United States Government?

A: Yes, sir, I did.

Q: Did you learn quite a bit about food stamps during the course of your investigation?

A: No. I wouldn't say I learned quite a bit, no.

MR. TENNENBAUM: I have an empty book of food coupons, your Honor. I'd like to have it marked as Respondent's first in order, please.

THE COURT: We're off the record for a moment. (Discussion off the record).

THE COURT: We're back on the record, and I have marked for identification as Respondent's Exhibit A what appears to be a blank food stamp coupon booklet.

(Thereupon, the afforementioned document was marked Respondent's Exhibit A for identification.)

BY MR. TENENBAUM:

Q: Showing you Respondent's A, Mr. Emmons, which is the food stamp booklet, was that the kind of booklet you sold to Mr. Shaw?

A: It appears to be similar, yes, sir.

Q: I notice that the denomination on that cover is $50. You mentioned previously that the type you sold were 55 and 65? Is there any other difference other than that?

A: Not that I'm aware of. I'm sorry. I had the figure that they were 55 and 65, I could have sold him -- I did sell him $65 books I have indicated in my report. And whether the other denomination I sold him was 50 or 55, I'm not sure.

Q: Okay. Let's go on with the booklet that's in front of you. Would you take a look at the back cover inside portion. Right where the judge has put the stamp. And would you read that aloud for the record, please?

A: Yes, sir. "Food stamp reminder. Persons using illegally-obtained food stamps may be found guilty of a felony and subject to a fine, imprisonment, or both."

Q: Isn't it true, Mr. Emmons, that that admonition was not on the food stamps that you sold to Mr. Shaw?

A: I don't know.

Q: Do you remember testifying in court at Mr. Shaw's trial? Do you remember testifying at his trial?

A: Yes, sir, I do.

Q: Do you remember testifying that the books that you sold to him did not contain that admonition?

A: I'm sorry, sir. It's my recollection that Miss Littleton testified to that. I didn't.

Q: You do remember hearing that testimony?

A: I remember hearing it, and believe that it's her that said that.

Q: Is there any reason why the food stamps that were sold to Mr. Shaw did not contain that admonition?

A: Boy, I'm sorry. I don't know.

Q: Were you a party to removing that admonition?

A: No, sir, I was not.

Q: In other words, the admonition, if it was removed by placing a different back cover on the food stamps that were sold to Mr. Shaw was done before the stamps were given to you; is that correct?

A: Yes, sir.

Q: And you don't know what the purpose was in removing that admonition before they were sold to Mr. Shaw, do you?

A: No, I don't.

Q: Were you present at any time when Mr. Shaw may have said that he was going to give those food stamps away to people?

A: Not give them away, no, sir.

Q: At no time did Mr. Shaw say that he was going to sell these for a profit, did he?

A: No, I don't recall -- excuse me. If I could go back to your last question.

Q: Let's answer this one. The answer to this one is no, and now you want to go back to the other one?

A: Yes, sir.

Q: And the other question was at any time did you hear Mr. Shaw say he was going to give these stamps away?

A: Okay, then I answered it correctly. I did not hear him say that.

Q: Okay. Do you remember the names of any of Mr. Shaw's bartenders?

A: Yes, sir. Yes, I remember Sharon.

Q: How about Carol? Does the name Carol ring a bell?

A: I think I did hear it, but I can't picture her.

Q: Do you remember the names of any other bartenders?

A: Bridgett.

Q: Did you tell any of these bartenders either Carol of Sharon or Bridgett that your business was to deal in discontinuing merchandise?

A: I believe I did on occasion, or something similar to that.

Q: Did you also tell that to Mr. Shaw when you first met him?

A: I could have. Yes, sir.

Q: Was there any reason why, when you sold merchandise to Mr. Shaw, that the amounts were a minimum of $200?

A: No, sir.

Q: It didn't have anything to do with the fact of attempting to get Mr. Shaw on a felony as opposed to a misdemeanor?

A: No.

Q: With regard to the alcoholic beverages that were sold to Mr. Shaw, on the phone conversation he first asked you to bring it to his home, didn't he? Sir, if you have an independent memory of it. Let's start with the beginning. Do you have an independent memory of the phone conversation which preceded the delivery of the alcoholic beverages to The Cozy Bourbon Club?

A: I recall portions of it, and I don't recall that. That occurred later.

Q: Do you remember in the phone conversation Mr. Shaw asking you to bring the alcoholic beverages to his home?

A: Not in the phone conversation.

Q: Do you remember in the phone conversation you telling Mr. Shaw that you had another person with you?

A: No, I don't recall that.

. . .

EXHIBIT B
LITTLETON TESTIMONY
AT STATE TRIAL
Re: San Jose Police,
Warning Labels on Food Stamp Booklets

Statement of Federal Agent Ann Littleton of the U.S.D.A.

PLEASE NOTE: The food stamps being obtained from her under perjury -- the police telling her that the petitioner was a known fence. In addition, Littleton was interested in trafficking, not closing down a bar.

In addition, Agent Littleton gave Emmons $910.00 worth of Food Stamps on April 30th. On that same day Emmons stated he sold Shaw $510.00 worth of food stamps. What happened to the other $400.00? See pages 5 and 6 of Petitioner's Brief in the Appellate Court.

Finally, Littleton stating that Petitioner's food stamp booklets should have had the warning labels on them since the warning was on booklets prior to 1978 series.

[EXCERPTS OF TESTIMONY
FROM REPORTER'S TRANSCRIPT FOLLOW]

[RT p. 116:]

. . .

[Examination by Mr. Dettmer]

A: We investigate anybody that is abusing the program, in whatever manner.

Q: Okay. now, you came down and got in contact with the San Jose Police Department. You got ahold of them, they didn't get ahold of you, is that correct?

A: Yes.

Q: You told them that you wanted to get food stamp abusers, so to speak?

A: That is not exactly what I told them. I introduced myself as an agent with the Department of Agriculture, and I told him, I asked him if they were aware of any type of abuse going on in this particular area, and if so, we would like to work cases with them.

Q: Okay. You were particularly interested in people that were abusing food stamps in the area?

A: Yes.

Q: They told you that they had soembody that they could sell food stamps to, is that what they told you?

A: They told me that they had a subject who indicated an interest in buying food stamps.

Q: When did they tell you that?

A: I don't remember exactly when Officer Cossey called me up to let me know. It was sometime towards the end of April, after our first meeting.

. . .

[RT p. 119-122:]

Q: Okay. And could you look at the back of it, the back page, the inside back page? It has some writing on it, is that correct?

A: Yes, that's correct.

Q: Now, do you find here anywhere where it says it's unlawful to use it?

A: Not on the back page.

Q: Does it say so on the front page anywhere?

A: On the front page it has a certification. The person using the food stamps is responsible for filling that out.

Q: Doesn't have any indication in there that it is unlawful, or anything, to possess those if they weren't issued to you, does it?

A: It doesn't say it's unlawful. However, it says that the individual must be authorized by the Department of Agriculture to participate in the program before they can use the stamps.

MR. DETTMER: Your honor, I have a food stamp book I would like marked for identification, please.

THE COURT: Defendant's Exhibit D for identification.

(Whereupon, the above-mentioned food stamp book was marked Defendant's Exhibit D for identification).

Q: (By Mr. Dettmer) Special Agent Littleton, I show you a food stamp booklet marked Defendant's Exhbit D for identification, and ask you if you can identify that?

A: This is also a Department of Agriculture food stamp book.

Q: Does it, on the inside back page of that food stamp book, say anything about it being unlawful to possess?

A: It says persons using it illegally may be guilty of a felony, subject to a fine, imprisonment, or both.

Q: That booklet says that, is that correct?

A: Yes. This is a brand new book, Series 1981.

Q: And does that booklet indicate that?

A: No, this is an older booklet, Series 1978. It does not indicate that.

Q: Now, did the Department of Agriculture change their writing on those books at any point in time, to your knowledge?

A: Obviously, they did between '78 and '81. However, the law has never changed in this time frame.

Q: Do you happen to know why the Department of Agriculture changed the writing on the books?

A: No, I don't.

Q: Do you have more food stamp fraud now than you used to have, or did you have more in, say '79 and '80?

A: I'm am not qualified to make that statement.

Q: Now, these food stamp booklets that were sold came from the United States Government, is that correct?

A: Yes, that's correct.

Q: The United States Government, in other words, then made a decision that through you, evidently, that they were going to sell these food stamps, is that correct, or they were going to have the San Jose Police Department sell the food stamps?

A: Yes.

Q: Nobody stole the food stamps from the United States Government?

A: Not these particular ones, no.

Q: Nobody even cheated the United States Government out of these food stamps?

MR. BALDWIN: Objection. That is argumentative and calls for a conclusion of this witness.

THE COURT: Sustained.

MR. BALDWIN: Well, I will withdraw the objection.

THE COURT: I have already ruled. Do you want me to withdraw the ruling?

MR. BALDWIN: Yes.

THE COURT: All right, the ruling will be withdrawn.

MR. DETTMER: Can we have the question read back?

(The question was read by the reporter.)

THE WITNESS: I don't know what you mean by cheat the government out of these stamps.

Q: (By Mr. Dettmer) Okay. The government made a conscious decision to sell the stamps, is that correct?

A: To develop a case, yes.

Q: Okay. When you gave these stamps to the San Jose Police Department, did you know anything about the background of the person that the San Jose Police Department was going to ssell the samps to?

A: They indicated to me that he was a known fence, that he had dealt in stolen property.

Q: Okay. Who told you that?

A: I don't remember exactly. It was probably Officer Cossey or Sergeant Emmons.

Q: Okay. Did this person ever tell you that he had dealt in stolen food stamps?

A: No, simply that he had indicated an interest in purchasing stamps.

Q: Was your intention to use these stamps to maybe catch somebody who had been involved in food stamp fraud in the past, for instance? Is that what your main interest was?

A: No. My main interest was simply in the offering for sale the stamps to see if he would --

Q: -- Buy them?

A: If he would buy them.

Q: So you could then prosecute him for illegally buying them, is that correct?

A: If he was involved in trafficking of food stamps, we wanted to find out. Yes, that's correct.

Q: If he bought them, you wanted to prosecute him for it?

A: I didn't necessarily want to prosecute the man. I simply wanted to have the food stamps offered to see if he was trafficking, and the logical conclusion is that he would be prosecuted for criminal activity.

Q: Okay. So you wanted to sell the food stamps under the guise of prosecuting a person that bought them, isn't that correct?

MR. BALDWIN: Objection. That's argumentative as phrased.

THE COURT: Sustained.

Q: (By Mr. Dettmer) Prosecution was one of the things in your mind when you agreed to sell the stamps, isn't that correct?

A: Yes, that's my job.

. . .

[RT p. 127:]

. . .

Q: To the best of your recollection, what is the first time, the first date that anyone from San Jose Police told you, "Yes, we definitely have somebody who is interested in buying food stamps"?

A: To the best of my recollection that was April the 30th, 1980.

Q: Let's talk for a moment about our two sets of food stamps here. We have got Defendant's Exhibit D which contains the admonition on the back about illegally obtaining stamps, is that right?

A: Yes, that's correct.

Q: And we have Exhibit 12 that contains no such admonition?

A: Yes, that's correct.

Q: Now, my question is, are you absolutely positive that the first time that admonition was ever printed on any food stamp booklets was for the 1981 series?

A: No, I am not. It could have been 1980. I don't pay that much attention to the book itself.

Q: Okay. Is there any way you can check that?

A: Yes, I can absolutely.

Q: How can you do that?

. . .

[RT p. 133:]

. . .

Q: (By Mr. Baldwin) Agent Littleton, were you able to verify anything one way or the other about whether these admonitions have been printed upon the back of food stamp coupon books?

A: The individual I called, the administrator in the Food and Nutrition Service, had a book in front of him which was Series 1975 that also, on the inside of the back cover, related the fact that it is illegal to use food stamps for any other purpose other than to buy food with them. He could not tell me the exact years where they had the statement or did not have the statement, and the definite answer would be from somebody in Washington, D.C.

MR. BALDWIN: Your honor, I have no further questions. I would ask that this chart on the board be marked as People's next for Identification and entered into evidence.

THE COURT: Do you have any questions for this witness?

MR. DETTMER: No, I have no further questions, your honor. I have no objection to that.

THE COURT: First of all, let's take care of the witness. You have no further questions?

MR. DETTMER: I have no further questions.

THE COURT: All right, you may step down. You may be excused if there are no objections.

(Witness excused)

THE CLERK: The chart will be marked People's Exhibit 14 and admitted into evidence.

. . .

EXHIBIT C
EMMONS TESTIMONY
AT STATE TRIAL
Re: Advice to Petitioner,
Selling Solely to Petitioner

PLEASE NOTE: Police Officer Emmons assuring the Petitioner and giving the petitioner more than a little bit of additional advice. Moreover, Police Officer Emmons offering the Food Stamps to others and not selling the stamps to others who were willing to buy.

[EXCERPTS OF TESTIMONY
FROM REPORTER'S TRANSCRIPT FOLLOW]

. . .

Q: So basically, the United States Government was authorizing you to sell these food stamps, in your mind?

A: Yes, sir, that's true.

Q: And you sold them for approximately what, 40% of the face value?

A: Yes, sir, that's correct.

Q: Do you, of your own personal knowledge, happen to know what food stamps are generally sold for to people that are authorized to buy food stamps?

A: No, sir, I don't.

Q: Now, you sold these food stamps to Mr. Shaw with the purpose in mind of arresting Mr. Shaw for this?

A: Eventually, yes, sir.

Q: Eventually? As a matter of fact, you did this quite a few times, didn't you?

A: Yes, sir, I did.

Q: And on several occasions you told Mr. Shaw that he couldn't get in trouble for this, didn't you?

A: Yes, sir, I did.

Q: You also told Mr. Shaw how to go about using the food stamps so that he wouldn't get in trouble?

A: Yes, sir, I did.

Q: Mr. Shaw, on several occasions, said to you, "Well, I don't know about this, you know. Are you sure I can't get in trouble for this?", and you told him, "No, don't worry about it, you can't get in trouble"?

A: Yes, sir, that's true.

Q: You not only sold Mr. Shaw the food stamps, you told Mr. Shaw how to go about using them so he wouldn't get caught using them, didn't you?

A: You mean, that was my purposes? No, that wasn't my purpose.

Q: No, but you did tell him that?

A: I told him that.

Q: You told him that?

A: Yes.

Q: All the while knowing that Mr. Shaw really was going to get in trouble for this?

A: I knew he would eventually be arrested, sir, yes.

Q: You very deliberately lied to Mr. Shaw in several different ways, didn't you?

A: Yes, sir, I did.

Q: And before you embarked upon this program, you did it with the blessings of the Burglary Prevention Unit and the Vice Squad, is that my understanding?

A: Yes, sir.

Q: Vice had an interest in you being in Mr. Shaw's bar?

A: Yes, sir, they did.

Q: Now, you spent a lot of time in Mr. Shaw's bar, didn't you?

A: Yes, at first.

Q: How many hours do you think you spent in that place?

A: Oh, I don't know. I would have to guess. Over a hundred.

Q: Over a hundred hours?

A: Yes.

Q: Hanging out in there, drinking and stuff like that?

A: Yes, sir.

. . .

Q: However, you did very specifically, in a very specific manner and way, assure Mr. Shaw that he couldn't get in trouble for what he was doing with those food stamps?

A: Yes, sir.

MR. DETTMER: May I have just a moment, your honor? I have a couple of things to look up here, and then I will be done.

Q: (By Mr. Dettmer) Officer Dubray was down there with you for a while, wasn't he?

A: Yes, sir, he was.

Q: When was that?

A: That was up until about February or March, I believe. He quit the Department.

Q: And Officer Dubray is not a Police Officer any more?

A: No, sir, he is not.

Q: Did you know a bartender down at The Cozy Bourbon named Bridget?

A: Yes, sir.

Q: To your knowledge, do you happen to know if Officer Dubray had some sort of a relationship with Bridget?

MR. BALDWIN: Your honor, may we approach the bench again?

THE COURT: Yes.

(Whereupon, counsel approached the bench where a discussion was had out of the hearing of the jury and was not reported.)

MR. DETTMER: I will withdraw the question, your honor.

. . .

Q: Now, you indicated that you offered the food stamps to several different people, is that correct?

A: Yes, sir, it is.

Q: And you testified that Mr. Shaw was the only person that wanted them, correct?

A: No, that is not exactly correct. There's a lady named Georgia that tried to put together a deal with several people for some, which she could never get together. And a girl named Lisa wanted some, but she wanted them at a cheaper price.

Q: You also offered them to a guy named Papa Carl who runs the Winchester Lounge?

A: No, I didn't. I couldn't --

Q: Do you have firsthand knowledge that they were offered to him?

A: I don't know if he was offered food stamps or not, no, I don't.

Q: Have you ever reviewed a tape recording where he was offered food stamps?

A: No, not that I recall.

Q: So in your direct examination this morning then, when you say that nobody else wanted them but Mr. Shaw, you were incorrect?

A: Other people actually wanted them. I never sold them to anybody else.

. . .

Q: . . . result of the sting operation you have testified sixty some odd times in court.

A: Yes, sir. I would say that's pretty close.

Q: Were any of those other caees cases of attempted receiving stolen property, where the police sold something to somebody, and then arrested them for it?

A: I don't believe any of those I testified were, no.

Q: This was the only one?

A: That would be the only one I was involved in, yes.

Q: Now, over this 14-month period of time that you were involved in the sting operation, you have compiled numerous police reports, correct?

A: Yes, sir.

Q: You testified as a witness in trials over sixty times, correct?

A: Yes, sir.

Q: And you dealt with hundreds and hundreds of people through this period of time, correct?

A: Yes, sir.

Q: That is why you -- strike that.
And the reason why, during your direct examination you referred to your report, for instance, you do that because you have a difficult time now remembering the facts without referring to your report?

A: Yes, sir.

Q: As a matter of fact, you had to refer to your report numerous occasions during your direct examination?

A: Yes, sir, I did.

Q: And it's hard for you to remember the facts of this case without referring to your report?

A: Certain specifics, yes, sir.

. . .

Q: And you also know if Mr. Shaw is convicted of a felony he would lose his liquor licenses?

A: That's my understanding, yes.

MR. BALDWIN: May we approach the bench, your honor?

THE COURT: Yes.

(Whereupon, counsel approached the bench where a discussion was had out of the hearing of the jury and was not reported.)

Q: (By Mr. Dettmer) I just have a couple of other questions, Sergeant Emmons, and then I will be finished.

When you were down there at The Cozy Bourbon, hanging out for your hundred hours, you met people that worked there?

A: Yes, sir, I did.

Q: Bartenders?

A: Yes, sir.

Q: And you would recognize them if you saw them?

A: Yes, sir, I would.

Q: You had conversations with them?

A: Yes, sir.

Q: Okay. Spent a lot of time with them?

A: Yes, sir, we did.

Q: You were quite visible in the bar, and you were a big tipper, if I remember you saying?

A: Yes, sir, I was.

Q: Now, you never told Mr. Shaw at anytime that you were in need of money or anything like this, isn't that correct, to get him to buy stuff from you?

A: Not to get him to buy stuff. . . .

[RT p. 159:]

. . .

A: I didn't use the word stolen, no.

Q: You said something to the extent that you got it off of a shipment and kept it out especially for him?

A: Yes, sir.

Q: Okay. Now, somebody saying that, does that convey stolen, to you?

A: Yes, sir, it does.

Q: If somebody, you know, wanted to sell something that was expensive for a lot cheapter, you know, and said, "Oh, yes, I got one of these off of a shipment, and I got this one out especially for you," that, in your mind, means that that has got to be stolen?

A: Yes, sir, it's a pretty good indication.

Q: You never told Mr. Shaw what you did for a living, did you?

A: I think I told him once that I bought and sold things, in general terms, but that was about it.

Q: You bought and sold things, in general terms?

A: I may have said I was an appraiser or liquidator, but other than that, no.

Q: An appraiser, liquidator?

A: Yes.

Q: You told him that before you sold him the microwave oven?

A: I just don't recall whether it was before or after.

Q: Okay. Somewhere around that time that was the general idea and general impression you conveyed to him, isn't that correct?

A: I believe so, yes, sir.

. . .

[RT p. 157:]

Q: Now, you testified on direct examination that you participated in a conversation with some vice cops, between the time you sold Mr. Shaw this microwave oven in April, when you started selling him the food stamps, is that correct?

A: No, sir, it was -- it was one sergeant from the vice unit, and it was prior to the sale of the microwave oven.

Q: Prior to the sale of the microwave oven?

A: Yes.

Q: Half of the money for the microwave oven came from the Vice Squad, right?

A: Vice or Intelligence. I don't know how their pay schedule is. Vice is under Intelligence.

Q: Okay. But half of the money came from Burglary Suppression, your unit, and half of the money came from Vice?

A: Yes, sir.

Q: And you say you went down there, started to go down there at the request of a friend, in December?

A: He didn't request me to, no, sir.

Q: Help somebody out?

A: I'm sorry, are you talking about why I went to The Bourbon?

Q: The police didn't send you down there?

A: They didn't send me there specifically, no.

Q: Now, this microwave oven that you sold Mr. Shaw, was this kind of a spur-of-the-moment decision of yours?

A: No, sir, it wasn't.

. . .

[RT p. 170:]

Q: That was basically the end result of the whole thing, wasn't it?

A: We had a warrant for another party out there, too.

Q: Now, you got to see the people that go into The Cozy Bourbon when you were there, didn't you?

A: Yes, sir, I did.

Q: They were predominantly black?

A: Yes, sir, they were.

Q: Street people?

A: Yes, sir.

Q: I think the way you put it, it's kind of a place where street people congregate?

A: Yes, sir.

Q: And I guess this would include savory types and unsavory types, isn't that correct?

A: Yes, sir, I think it would.

Q: Were there a lot of other police officers down there in the area when you were at The Cozy Bourbon?

A: In the area, yes, sir. They have walking patrol, too.

Q: Did they ever come through there when you were in there?

A: Yes, sir, they did.

Q: Now, between January and April, when you made your first food stamp sale, did you go in The Cozy Bourbon a lot then?

A: Yes, sir, I believe I did.

Q: And you had conversations with Mr. Shaw?

A: Yes, sir, I did.

Q: None of which are recorded?

A: No, sir, they weren't.

. . .

EXHIBIT D
EMMONS TESTIMONY
AT STATE TRIAL
Re: Value of Alcoholic Beverages

PLEASE NOTE: The San Jose Police committing perjury in an affidavit to obtain a search warrant. The sting operation was set up to buy stolen goods, not to sell non-stolen goods. The affidavit wrongly states that the alcoholic beverages constituted a felony. The value was $120.00

[EXCERPTS OF TESTIMONY
FROM REPORTER'S TRANSCRIPT FOLLOW]

[RT p. 13:]

. . .

Q: What was the property?

A: It was food stamps.

Q: What is the face value of them?

A: May I refer to my police report? $5,185.00.

Q: What was the negotiated price?

A: $2,000.00.

Q: Did you tell him that the property was stolen?

A: Yes, I told him they were off the loading dock and that they would not be missed for six months.

Q: On the 2nd of July, did that sale take place in Santa Clara County?

A: Yes, it did.

Q: Referring now to the 25th of September of 1980. Did you sell any property to Mr. Shaw on that day?

A: Yes, I did.

Q: What type of property?

A: It was beer and liquor.

Q: Approximately what quantity?

A: Approximately nine cases of beer and one case of Seagram's 7 bourbon.

Q: What was the value of the property?

A: Approximately a hundred and twenty dollars.

Q: Did you tell him this property was stolen?

A: Yes, I indicated that by the price I told him I paid for the beer and the whiskey.

Q: What was the negotiated price to Mr. Shaw?

A: $73.00.

. . .

[AFFIDAVIT FOR SEARCH WARRANT]
emphasis added

YOUR AFFIANT, SERGEANT JIM CORNELIUS, is a police officer with the City of San Jose, and has been so employed for approximately twenty years. Your Affiant is presently assigned to the Burglary Suppression Unit. In that capacity the Unit is presently operating a (sting) operation, which sells property represented to be stolen to willing purchasers. Sergeant James Emmons is also assigned to the Suppression Unit and is presently the main officer connected with the sting operation previously mentioned.

On September 25, 1980, Sergeant Emmons spoke with your Affiant concerning the sale of property represented to be stolen to one RONALD R. SHAW, at the address previously described in this Affidavit. Your Affiant believes the information given by Sergeant Emmons to be true and accurate.

Sergeant Emmons advised that he has been selling property to Mr. Shaw which he, Sergeant Emmons, has represented to be stolen since January of 1980. That Mr. Shaw has made five prior purchases at least of property represented to have been stolen. In reality it was property from the Police Property Room and federal food stamps furnished by the U.S. Department of Agriculture.

Sergeant Emmons advised that on September 25, 1980, he agreed to sell alcoholic beverages to Mr. Shaw. That he, Sergeant Emmons, had represented the alcoholic beverages to have been stolen. That Mr. Shaw agreed to purchase the alcoholic beverages and that Sergeant Emmons did in fact, deliver the alcoholic beverages to the aforementioned address and turn them over to the custody and care of RONALD S. SHAW. That Mr. Shaw paid $75.00 for all of the alcoholic beverages previously described in this affidavit.

Sergeant Emmons advised that the alcoholic beverages were unloaded from his vehicle into a storage area located inside the west end of the Bourbon Club. That this delivery took place on September 25, 1980, at approximately 2:25 in the afternoon. Your Affiant believes that the aforementioned property will be found

on the premises of the Bourbon Club at the above address, and this property constitutes evidence of the commission of a felony, to wit: a violation of California Penal Code Section 664-496 (ATTEMPTED RECEIVING STOLEN PROPERTY).

That based upon the above facts, your affiant prays that a Search Warrant be issued with respect to the above location for the seizure of said property, and that the same be held under California Penal Code Section 1536 and disposed of according to law.

(Signed)

_____

SERGEANT JIM CORNELIUS

Subscribed and sworn to before me
on this 26th day of September, 1980.

(Signed)

_____

JUDGE OF THE MUNICIPAL COURT

FRED S. LUCERO

TRM:tr

WARRANT #
RECEIVED BY (Signed Sgt. Jim Cornelius)
ON (4-26-80)

MUNICIPAL COURT OF CALIFORNIA
SANTA CLARA COUNTY JUDICIAL DISTRICT
SAN JOSE FACILITY

STATE OF CALIFORNIA	)	AFFIDAVIT IN SUPPORT OF SUPPORT OF SEARCH WARRANT
	) ss	
COUNTY OF SANTA CLARA	)	

Personally appeared before me this 26th day of September, 1980, SERGEANT JIM CORNELIUS, who, on oath, makes complaint, and deposes and says that there is just, probable and reasonable cause to believe, and that he does believe, that there is now in the possession of RONALD R. SHAW, on the premises located at The Bourbon Club, 401 S. 1st St., San Jose, California, which premises consist of: a single story wooden structure on the wouthwest corner of First Street and San Salvador Street in San Jose, with the sign Bourbon Club over the front entrance.

Personal property described as follows:

1. Three cases of Olympia 11-ounce bottles of beer;

2. One case of Michelob 12-ounce bottles of beer;

3. One case of Coors 12-ounce bottles of beer;

4. Three cases of Schlitz 16-ounce cans of beer;

5. One case of Seagrams-7, 80 proof liquor amounting to 12 9-liter bottles;

Items 1 through 5 are identified by an infrared marking pencil (JLE) located on the case.

EXHIBIT E

Petitioner's Petition that was filed in the Ninth Circuit Court.

[FOLLOWS IN FULL]

INTRODUCTION

Appellee's Preliminary Statement

I. The Court's opinion conflicts with another decision of this court that was handed down on April 28, 1986, No. 84-1895.

II. The points to be raised are:

1. The conflicting opinions handed down within a four month period.

2. The facts and laws overlooked:

A. Involving the *Twigg* case.

B. The motive behind selling the appellee non-stolen food stamps.

C. The attempt to receive stolen goods, when the goods are given by the owner, is contrary to Penal Code 496.

D. The case law, attempt to receive, is used in a discriminatory fashion and is designed to take away the gains that non-whites gained under the Civil Rights Act of 1964 which should be condemned by this court.

E. Title 42, Section 1983.

F. Title 18, Section 242.

G. Civil Rights Act of 1964.

H. Additional information that the court should have been aware existed.

The following information is only an attempt to bring out the facts to the court. It is not intended to cause embarrassment to any party, or discredit the

court's opinion, and is not intended to be used by the appellee in a threatening manner. This petition is an attempt to aid the court to enforce the U.S. Constitution.

RONALD R. SHAW
P.O. BOX 4887
SAN JOSE, CALIFORNIA 95150

Plaintiff in Pro-Per

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Ronald R. Shaw, *Appellee,*	)	**No. 85-2285**
v.	)	**Petition for Rehearing on the Facts or Law**
Sheriff Robert Winter, *Respondent*	)	

STATEMENT OF THE CASE

1. On April 25, 1977, the appellee, Ronald R. Shaw, purchased a liquor bar located at 401 South First Street, San Jose, California. The clientele changed from all white to sixty percent black by teh year of 1979. There was no problem with the San Jose Police up to that year.

2. In the year of 1979, the City of San Jose had proposed plans for ground breaking for redevelopment of the downtown San Jose area in which plaintiff's bar was located. The ground breaking commenced in the year of 1980.

3. In September of 1979, a San Jose police sergeant who had been born and raised in the State of Oklahoma* was assigned to the plaintiff's bar to observe what could be done to cause the California

*NOTE: The San Jose Police Officer's birth is only to infer that it is more likely that a Southerner would be more likely to dislike blacks than one born in the north, but not absolutely true.

Alcholic Beverage Control to revoke the bar's license so that black citizens would leave San Jose.

4. In December of 1979, the undercover officer, Sergeant James Emmons, approached the appellee and told the appellee, Shaw, that he dealt in discontinued merchandise and bought and sold items. Said officer left his name and telephone number for Shaw to call if anyone came into the bar with items for sale. In addition, Shaw was given the clothing size of said undercover officer because the officer stated that he was in need of clothes.

5. Within 24 hours an unidentified man walks in Shaw's bar and, without approaching any of the customers, approaches Shaw and informs Shaw that he has some suits and leather jackets for sale at a cheap price and would like to know if Shaw knows of anyone that would fit into size 44 clothes.

6. Shaw called Emmons, by phone, and told him that a guy had some suits for sale that would fit him and would have the guy call him. Emmons allegedly bought the clothing.

7. Shaw discovered through carefully reading the transcripts of his trial that the suits were taken back to the store before the trial and the unidentified person who allegedly sold the suits to Emmons was not arrested or ever identified.

8. The mere fact that the allegedly stolen suits were taken back to the store before trial and the person was not arrested or identified infers that there was a conspiracy to cause Shaw to commit a crime so that Shaw would lose his liquor license.

9. The above setup infers that the suits were on loan and the unidentified person was actually working uncercover with Emmons. Shaw was supposed to buy the suits from the unidentified person and sell the suits to Emmons for a profit which would give credence that Shaw was a dealer in stolen goods.

10. After the suit scheme failed, Emmons obtained some food stamps from the Unitd States Department of Agriculture.

11. In April of 1980, Emmons offered to sell Shaw food stamps informing Shaw that he could not get into any trouble by buying the food stamps and on several

occasions told Shaw that they were discontinued, not stolen. Shaw bought the stamps on several occasions.

12. Before the food stamps were offered or sold to Shaw, the penalty for unlawful possession and use was removed from the booklets so that Shaw would not question the stamps and Shaw could easily traffic the stamps to a store for money.

13. Emmons advised Shaw that he could obtain cash if Shaw knew of anyone that managed a food store. Emmons was attempting to cause Shaw to start trafficking food stamps.

14. Shaw did not attempt to traffic the stamps but gave some to the needy and his friends. In addition, Shaw used some himself but stopped after being embarrassed using the stamps in public.

15. Shaw's actions were contrary to the wishes of the conspirators who wanted the bar closed.

16. The remaining food stamps were stolen from Shaw by a trusted barmaid that Shaw had allowed to come into his office when he was not present. Shaw was eventually arrested for attempting to receive stolen goods as a result of buying the non-stolen food stamps. Shaw was convicted, by jury, of the above charges.

17. The California Alcoholic Beverage Control revoked Shaw's bar license after Shaw was convicted.

18. On March 25, 1984, Shaw caused a San Jose Mercury News article to appear on the front page detailing the "outrageous" and unconstitutional conduct of the San Jose Police Department.

19. The article served its purpose by informing the public of the "outrageous" conduct of the said police department. The article caused Shaw to become unpopular which Shaw was aware would happen.

20. On April 5, 1984, 10 days after the article, the conspirators caused Shaw to be arrested in Mountain View, California.

21. The Mountain View Police circumvented requesting the probation department to inform the said police department if the appellee was actually on probation, appellee's probation had been revoked and appellee, Shaw, had put up a $25,000.000 bond in lieu of probation. The Mountain View Police took the advice of the district attorney's department, and raided a

personal friend's of the appellee, apartment, believing that the appellee lived with the friend. A handgun was found in the apartment.

22. The friend had stated to a girl that she had a gun in her apartment and that is why she was not afraid to live alone. The gun information was relayed to the police and the appellee was set up once more.

23. The appellee, Shaw, was arrested for constructive possession of a handgun, even though the Mountain View Police had taken the appellee's keys and none of the keys would open the door to the friend's apartment. Appellee posted bail and was released.

24. When the appellee appeared in court for the $25,000.00 bond in lieu of probation, appellee was committed to the County Jail and served eight months.

25. While in custody, appellee, Shaw was given public defender, Edward Davila, without requesting a public defender, which caused appellee to become suspicious.

26. While in custody it became apparent to Shaw that certain parties have a buddy system that circumvents the United States Constitution due process clause. In other words, injustice is only a phone call away.

27. At Shaw's preliminary hearing, a witness testified that the California Alcoholic Beverage Control Agents had sent her to a buddy in the Mountain View Police Department to cause tfeh raid on the friend's apartment.

28. Please note the following in detail. As a result of the gun arrest, Shaw was given a one-day trial so unfair that it makes a mockery out of the United States Constitution. A conspiracy had been formed to send the appellee to prison promptly.

29. The conspirators were aware of action of civil suit filed against the City of San Jose and the State Alcoholic Beverage Control in Federal District Court.

30. As a result of attempting to cover up the constitutional conduct of the conspirators, another deceitful scheme was implemented.

31. While in custody, the appellee attempted to hire numerous attorneys. The attorneys, after conferring

with the said conspirators, refused to defend the appellee.

32. An inmate recommended an attorney who the inmate stated was not a party to the buddy system. Appellee contacted the attorney, Mark Schroeder, and was interviewed by Schroeder.

33. Schroeder appeared in the California Superior Court in Santa Clara County and informed the Court that he would be representing the appellee when he receives the money.

34. After Schroeder informed the court of his intention to defend the appellee in all matters when he receives the money, Schroeder was promptly arrested by the police.

35. After Schroeder was arrested, the local attorneys were too afraid to speak with the plaintiff. It was suggested by an attorney that the appellee had known for several years to hire an attorney out of Santa Clara County. The attorney suggested Attorney Frank Roach, of Union City, California.

36. The appellee contacted Frank Roach and had the case material sent to him. Attorney Frank Roach received the material and promptly sent the material back to the appellee with the words "not interested" written on the face of the material.

37. It became very obvious that a conspiracy was in force to send Shaw to prison so that he could not pursue his actions in federal court.

38. The appellee, Shaw, was forced to keep the deputy public defender, Edward Davila, and was given a one day "Kangaroo Trial" that the authorities in South Africa would be proud to parade around to show that they are no different than Americans.

39. The deputy public defender, Edward Davila, conspired with the prosecuting deputy district attorney, Susan Beglau, to obtain a conviction and promptly send the appellee to prison.

40. The said public defender sent an investigator to the appellee's friend, in conection with the gun charge. The investigator took a written statement. The statement stated that the gun was loaned to her and that the plaintiff did not live with her, and in addition, sent a

sworn statement to the district attorney stating the same.

41. The prosecuting district attorney, Susan Beglau, did not ever send an investigator to the plaintiff's friend.

42. In conspiracy with the public defender, Edward Davila, the prosecuting deputy district attorney, Susan Baglau, relinquished the case and became a perjuring witness to ensure that Shaw would be convicted and sent to prison.

43. At the one-day trial, Susan Baglau took the witness stand and testified to the jury that Shaw's friend had told her over the telephone that the gun belonged to Shaw and that Shaw lived with her.

44. Deputy public defender, Edward Davila, did not object to the deputy district attorney taking the stand and testifying to the jury. In addition, the sworn statement and the investigator's report were not ever referred to or submitted as exhibits to the jury.

45. The jury deliberated for approximately one hour and found Shaw guilty. At time of sentencing, the appellee, Shaw, was given a two years prison sentence and was ordered to prison within 48 hours.

46. When Shaw was being taken back to his jail cell, the deputy district attorney, Laura Schillings, who had taken the case so that Susan Baglau could testify against Shaw, stood outside the courtroom with her arms crossed and laughed at Shaw.

47. The foregoing convinced the appellee that he was not disliked, but hated for exercising his constitutional rights in federal court. Shaw posted bail before the 48 hours and Shaw was due to be released on the food stamp convictions.

48. While in custody, all attorneys refused to defend Shaw. Shaw filed a writ of habeas corpus contesting the food stamp conviction. The writ was granted by the United States District Court on "outrageous" grounds and all food stamp convictions were vacated.

49. After being released, Shaw filed a writ of habeas corpus on the gun conviction up to the California Supreme Court exposing the unconstitutional conduct of the conspirators.

50. The writ listed the following "outrageous" grounds in court of law: 1) ineffective assistance of counsel, 2) trial judge violated California Penal Code 1025 - submitting the prior food stamps convictions to the jury, 3) deputy district attorney was in violation of Penal Code 181 prejudicial misconduct in front of a jury, 4) appellee's friend's apartment was illegally searched, 5) Shaw's probation had been revoked (illegal search), 6) Mountain View Police Officer and deputy district attorney committed perjury under oath in front of the jury, 7) evidence did not support that a crime of constructive possession of a handgun was committed, 8) Shaw was denied time to obtain competent counsel after substitute attorney had been arrested, 9) mis-stating Penal Code 12021 to the jury -- using the word "and' when Penal Code 12021 reads "or", 10) agents of the California ABC instigated the arrest by sending a witness to a buddy in the Mountain View Police Department, 11) Shaw was denied a complete trial transcript for an appeal, 12) outrageous conduct of the public defender and deputy district attorney, 13) prior food stamp conviction has been vacated. The foregoing shows the ongoing violation of the appellee's civil rights by the state.

The appellee is calling the court's attention to the fact that the case law, attempt to receive stolen goods, is contrary to California Penal Code 496 in that Penal Code 496 does not define non-stolen goods. In addition, the cases that the court used in its opinion (Rojas), and the other cases, shows informants and the defendant's acting on their own initiative. Shaw did not act on his own initiative and the attempt to use an informant on Shaw failed. The above material facts were overlooked by this court.

MATERIAL FACTS AND LAWS OVERLOOKED

1. The court has overlooked the laws that protect the black citizens from the deceitful and unconstitutional conduct of the police.

2. The appellee is calling the Court's attention to Title 18, Section 242 which makes it criminal for the state under color of law to deprive a citizen of his civil rights. In addition, Title VII of the Civil Rights Act of 1964, and Title 42, Section 1983 forbids the state to unlawfully act under the color of law and violate the constitutional rights of the appellee.

3. The facts show that the appellee was targeted for the sole purpose to cause his bar to close so that the black citizens would leave the area. The San Jose Police engaged in deliberate, vexatious conspiratoral conduct, under color of law, with the intended purpose to violate the civil rights of the appellee because he is black and his customers were sixty percent black. The food stamp scheme was not attempted on the white bar and owner located 80 feet from the appellee's bar.

4. The sole purpose of targeting the appellee was to close the bar and drive the black citizens out of the San Jose downtown area.

5. The appellee is calling the Court's attention that the San Jose Police acted in bad faith and violated the civil rights of the appellee and a large number of black citizens that patronized the appellee's bar. The conduct of the San Jose Police was done under color of law in violation of Title 42, Section 1983, Title 18, Section 242 and the 14th Amendment equal protection clause of the United States Constitution.

6. The food stamp scheme was done under color of law in a discriminatory fashion in that: a) acting under color of law and deceitfully removed the warning labels from the food stamp booklets for the sole purpose to cause the appellee to commit a crime and lose his liquor license, b) acting in a discriminatory fashion the San Jose Police refused to sell the stamps to non-blacks even though the non-blacks requested some of the stamps, c) the San Jose Police did not attempt to try and sell any white bar owner food stamps.

7. The above unconstitutional conduct of the appellants' shows that the treatment of Shaw was arbitrary, unreasonable, and was intentional and deliberate discrimination against Shaw on account of racial reasons.

8. The appellants violated the appellee's civil rights under the 14th Amendment of the United States Constitution in that the San Jose Police are enforcing a law, attempted to receive stolen goods which said law is designed and is only enforced against non-whites, in a fashion that abridges the privileges of black citizens and other minorities and violates the Equal Protection Clause.

9. The facts clearly show that there was no reason for the San Jose Police to target the appellee except to cause his bar to close.

10. The appellee has inferred throughout this matter that his civil rights have been violated by the unconstitutional conduct of the San Jose Police.

11. The appellee has attempted to not have this matter become a racial matter because we are all Americans.

12. The appellants conduct and this court's opinion condoning the "outrageous" conduct of the San Jose Police on the appellee and the black citizens leaves the appellee no choice except to seek support from the civil rights organizations and the offices of Congressman Ron Deleums, Don Edwards and Ted Kennedy among others. The appellee will be appealing this matter to the United States Supreme Court.

13. The United States Supreme Court stated under Section 706(9) a district court has broad discretion to award "appropriate" equitable relief to remedy unlawful discrimination to further the government compelling interest to combat the effects of past discrimination.

14. The above reflects the goals the high Court and Congress to protect the civil rights of victims of discrimination.

15. This Court's opinion is contrary to the Supreme Court's intentions to protect black citizens from "outrageous" discrimination and unconstitutional conduct under color of law by the states.

16. This Court's opinion condones the conduct and restricts the power of the district court to combat "outrageous" conduct that non-whites have to endure.

17. The facts, evidence and motives clearly show that the San Jose Police engaged in terrible conduct in this matter.

18. The district court had correctly applied the law under *Greene* and *Twigg*. The facts that this Court overlooked is that the appellee's case is identifical and takes the outrageous defense one step further. 1) there was no predisposition in Shaw's case as there was in *Twigg*. b) Twigg knew at all times that it is against the law to manufacture speed. Shaw did not know it was against the law to buy food stamps because the penalty had been removed and Shaw was told each time in person when he bought the stamps that they were not stolen but discontinued which was not recorded or the recording destroyed.

19. The Court stated on page 4 in the opinion that the police involvement in Shaw's case was not as long or deep as it was in the Twigg and Greene cases..

20. The Court is incorrect on the Twigg case. The Twigg matter lasted only a few months and Twigg was arrested within 90 days. Shaw's case began in September 1979 and was not arrested until September 1980.

21. The Court overlooked a very important fact. The Court stated on page 1 that Shaw introduced Emmons to someone who sold Emmons some suits. The facts show that Shaw gave Emmons' telephone number to the person who allegedly had some suits. The facts show that the suits may have never existed and if they did the facts show that the suits were on loan from a store. The suits were not shown to the jury or anyone.

22. The Court stated that Emmons hinted to Shaw on how to pass the stamps. Emmons stated under oath that he lied and assured Shaw on many occasions to get Shaw to buy stamps. (see Exhibit A). He did more than hint.

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PROOF OF SERVICE BY MAIL

The undersigned declares and says: That I am a citizen of the United States and a resident of the County of Santa Clara; I am over the age of 18 years, my mailing address is P.O. Box 4887, San Jose, California 95150.

On February 16, 1987, I served the within:

Petition for writ of certiorari

On the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office Mail box at San Jose, California addressed as follows:

Attorney Blair Hoffman
6000 State Building
San Jose, California
FRANCISCO
United States Court of Appeals
For the Ninth Circuit

United States District Court
For The Northern District
of California

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Jose, California, on February 16, 1987.

RONALD R. SHAW